court would be justified on that ground alone to reject all his evidence as regards repayments.

As I have stated above, from the evidence produced by the defendant it was clear that he made various payments, but it was not clear whether they were made towards principal or towards interest. In the circumstances the only course for me to adopt was to allow credit for each payment against the sum then due towards principal and interest and then work out the interest on the outstanding balance of the principal sum after the date of each payment. I therefore made an order for the Registrar to ascertain the amount actually due on the date of the judgment in accordance with that formula. Having made a rough calculation as to the amount due on the date of the judgment I was satisfied that it would not exceed the sum of $2,000. I therefore made an order for costs on the Sessions Court scale.

Order accordingly.

Solicitors: *Skrine & Co.; K. Chelvanayagam.*

TEE TEONG TONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Gill J.) April 25, 1964]

[K.L. — Criminal Appeal No. 2 of 1964]

Income Tax — Notice requiring a limited company to submit returns with audited accounts and balance sheet — Non compliance with notice — Income Tax Ordinance, 1947, ss. 59(1) and (3), 61 and 90(2).

The appellant the managing director of a limited company was served with a notice under section 59 of the Income Tax Ordinance requiring him to submit income tax returns together with certified true copy of the audited accounts and balance sheet. The notice of assessment was duly completed and returned but the notice for submission of the audited accounts and balance sheet was not complied with. The appellant was consequently charged under section 59(3) and convicted under section 90(2) of the said Ordinance and was fined $500, in default three months imprisonment. On appeal it was contended on behalf of the appellant that the Comptroller had no power under section 59 to ask for audited accounts and balance sheet and that such accounts and balance sheet could only have been called for under section 61 of the Ordinance.

Held: in the case of a company the Comptroller is given clear powers under section 59 to require the audited accounts and balance sheet to satisfy himself that the income is correctly stated in the income tax returns. Section 61 of the Ordinance gives him the same power and the additional power of requiring the production of any books documents accounts and returns as well as personal attendance for the purpose of further verification of the accounts. The notice of the Comptroller was therefore a good notice and the appeal must be dismissed.

CRIMINAL APPEAL.

L. M. Ong for the appellant.

Wan Hamzah (Deputy Public Prosecutor) for the defendant.

Gill J.: The appellant in this case was convicted in the Sessions Court at Johore Bahru on the following charge:

> "That you, Tee Teong Tong, the managing director of Tylot & Co. Ltd., 1-A, Jalan Dato Abdullah Tahir, Johore Bahru, Johore, being required by a notice in writing by the Acting Assistant Comptroller of Inland Revenue, Federation of Malaya, Johore Bahru, to furnish him within twenty-one days from 29th September, 1962 with return of income for the year of assessment 1962 together with a certified true copy of the audited trading and profit and loss accounts for the year ended 31st December, 1961 and an audited balance sheet as at that date of Tylot & Co. Ltd., though submitted the 1962 return of income on the 29th October, 1962, failed, without reasonable excuse, to furnish the aforesaid certified true copy of the audited trading and profit and loss accounts and the audited balance sheet thereby committing an offence under section 59(3) of the Income Tax Ordinance No. 48 of 1947 (as amended) and punishable under section 90(2) of the said Ordinance."

and sentenced to a fine of $500 in default 3 months' imprisonment.

There was no dispute about the facts of the case and the defendant elected to say nothing in his defence. The facts very briefly were that a notice of assessment of income tax for the year ending 31st December, 1961 was served on the appellant as the managing director of Tylot & Co. The notice of assessment was duly completed and returned to the appropriate income tax authority, but the notice for submission of the audited accounts and audited balance sheet was not complied with.

The appeal was brought on two grounds, one of which was that no sanction to prosecute either by the Comptroller of Income Tax or by the Public Prosecutor as required by section 95 of the Income Tax Ordinance, 1947 had been produced. This ground was raised because no copy of the sanction had been included in the appeal record. It was clear, however, that a sanction was produced at the trial. Consequently this ground was withdrawn.

The other ground turned on the interpretation of section 59(1) of the Ordinance. It was argued by Mr. L. M. Ong on behalf of the appellant that the notice was wrongfully issued under section 59 as the Comptroller has no power under that section to ask for audited accounts and balance sheet and that such accounts and balance sheet could only have been called for under the provisions of section 61 of the Ordinance. He went on to say that had a notice been issued under section 61 of the Ordinance no objection could be taken to it.

It is to be observed that section 59(1) of the Ordinance gives the Comptroller the power to require any person to furnish not only a return of income but "such particulars as may be required for the purpose of ascertaining the income". In my opinion in the case of a company the Comptroller is given clear powers

under this section to require the production of audited accounts and balance sheet for the purpose of satisfying himself that the income is correctly stated in the income tax return. Section 61 of the Ordinance gives him the same power and the additional power of requiring the production of any books, documents, accounts and returns as well as personal attendance of the party concerned. This power he is entitled to use if he requires the production of books and personal attendance for the purpose of further verification of the accounts which may have been called for for the purpose of ascertainment of the income tax under section 59(1) of the Ordinance.

For the reasons I have stated above I was of the opinion that the appellant had been rightly served with the notice under section 59(1) of the Ordinance and was therefore rightly convicted of the offence with which he was charged. I therefore dismissed the appeal.

Appeal dismissed.

CALHAEM v. M. S. ALLY & CO. LTD.

[O.C.J. (Gill J.) April 25, 1964]

[K.L. — Civil Suit No. 5 of 1964]

Practice and Procedure — Execution — Judgment obtained in Magistrate's Court — Proceedings by way of garnishment — Proceedings founded on a judgment which was wrongful — Whether a claim in damages lay for the garnishment based on wrongful judgment.

Damages — Wrongful attachment — Whether person wrongfully attached could claim damages — Whether bailiff liable in damages.

The plaintiff brought an action against the defendants for damages for wrongful attachment alleging that the defendants had wrongfully caused a garnishment notice to be served on the manager of the Hongkong & Shanghai Banking Corporation, Kuala Lumpur on September 21, 1963 attaching the monies of the plaintiff in the hands of the said Bank which notice was not withdrawn until October 23, 1963. The plaintiff alleged that the attachment was wrongful in that the judgment in the Magistrate's Court was in fact obtained by the defendants without any service of the summons having been made upon the plaintiff. The judgment in the Magistrate's Court was set aside on November 28, 1963.

The defendants applied to the court by way of summons in chambers for the statement of claim to be struck out on the ground that it disclosed no cause of action because the attachment in the Magistrate's Court was made when there was in existence a valid subsisting judgment and this judgment authorised execution proceedings.

Held: the plaintiff's assertion in his statement of claim that the summons in the Magistrate's Court was not served on him was not refuted by the defendants and on this assertion it was clear that the defendants obtained their judgment in the Magistrate's Court wrongfully if not fraudulently and *prima facie* the plaintiff was entitled to claim damages for attachment founded on that wrongful judgment since the attachment was subsequently withdrawn and the judgment set aside. The application by the defendants should therefore be dismissed.

Observations on liability of bailiff for wrongful attachment.

Cases referred to:—

(1) *Ives* v. *Lucas and Thomson* (1823) 171 E.R. 1079.

(2) *Williams* v. *Williams and Nathan* [1937] 2 All E.R. 559.

APPLICATION.

S. Sothi for the plaintiff.

Peter Mooney for the defendants.

Gill J.: This was an application by the defendants by way of summons in chambers for an order that the statement of claim in the suit be struck out as disclosing no reasonable cause of action and as being frivolous and vexatious and that the action be stayed or dismissed and that the defendants be at liberty to sign judgment for their costs of the defence and of this application as taxed.

The action is for damages for wrongful attachment. The facts of the case as set out in the statement of claim briefly are that on 21st September, 1963 the defendants (as plaintiffs in Kuala Lumpur Magistrate's Court Civil Action No. 66 of 1960) caused a garnishment notice to be served on the manager of Hongkong & Shanghai Banking Corporation, Kuala Lumpur, thereby attaching the monies of the plaintiff (as defendant in the civil action in the Magistrate's Court) in the hands of the said Bank. The garnishment notice was not withdrawn until the 23rd of October, 1963.

It is alleged that the attachment of the plaintiff's money was wrongful in that he was never served with the summons issued by the Magistrate's Court. It is further alleged that the summons was served on some person other than the plaintiff, which person was pointed out to the court process server by the defendants. The judgment in the Magistrate's Court was set aside on 28th November, 1963. The plaintiff claims that as a result of such wrongful attachment he has suffered loss of reputation and has been wrongfully deprived of the use of his monies with the said Bank and has thus suffered damages.

At the hearing of the summons it was argued by Mr. Mooney on behalf of the defendants that the statement of claim disclosed no cause of action, because the attachment in the Magistrate's Court was made when there was in existence a valid subsisting judgment. It was further argued that so long as that judgment subsisted it authorized execution proceedings. In this connection Mr. Mooney cited the old case of *Ives* v. *Lucas and Thomson.*(1) It was decided in that case that as long as a judgment exists, it protects those who seize property under an execution founded on it and that if the judgment and execution are set aside, no action lies against the sheriff for anything he did under it while it